

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL LORENZO WHITE,

Defendant-Appellant.

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UNPUBLISHED

May 19, 2011

No. 297204

Jackson Circuit Court

LC No. 09-060000-FH

Before: OWENS, P.J., and O'CONNELL and METER, JJ.

PER CURIAM.

Defendant, Michael Lorenzo White, appeals as of right following a jury trial where he was convicted of resisting and obstructing a police officer, MCR 750.81d(1) and of tampering with evidence, MCL 750.483a(5)(a). Prior to trial, and outside of the presence of the jury, defendant also pleaded guilty to operating a motor vehicle while his operator's license was suspended (OWLS), MCL 257.904(1). He was sentenced as a fourth habitual offender to four to fifteen years in prison for resisting and obstructing a police officer, four to fifteen years in prison for tampering with evidence, and to 90 days imprisonment for OWLS to run concurrently with each other, but consecutive to another sentence for which he was on parole at the time of his sentencing. We affirm.

On September 6, 2009, at 2:45 a.m., Michigan State Police Trooper Michael Church was patrolling the streets of Jackson. He observed a car pull out of a parking spot and almost hit another car. He followed the vehicle and decided to make a traffic stop after the driver made an illegal right hand turn from a passing lane.

Trooper Church approached the vehicle and observed defendant sitting in the driver's seat, and a passenger, Marshawn Hutchins, riding in the front passenger seat. As he illuminated the inside of the vehicle, Trooper Church saw defendant with material in his lap that Trooper Church believed to be crack cocaine. Trooper Church asked defendant to hand over the substance. Defendant held the substance away from Trooper Church and the two engaged in a tussle for the substance. Defendant then put the substance in his mouth. Trooper Church tried to pry open defendant's mouth, but was unsuccessful. Trooper Church then sprayed defendant in the face with pepper spray. Defendant coughed violently, but did not spit out the substance. Trooper Church believed that defendant had indeed swallowed what Church recognized as a rock

of crack cocaine. Trooper Church searched the area and did not find any of the substance on the ground or in the vehicle.

Trooper Church then removed defendant from the vehicle and handcuffed him. Church took defendant to the hospital. Trooper Church did not obtain a search warrant to pump defendant's stomach. Defendant refused medical treatment at the hospital, refused to change into a hospital gown, and refused to give a urine sample. Defendant did not show any signs of intoxication.

Marshawn Hutchins testified that he is defendant's son. Hutchins stated that on the night of the incident, defendant was driving normally and not speeding. He testified that defendant did not drink alcohol or use drugs. He stated that he did not see any crack cocaine on defendant's lap when he was pulled over. He thought that his father probably had a breath mint in his mouth, and that Trooper Church was lying about the crack cocaine. Hutchins acknowledged having been convicted of third degree home invasion and was on probation at the time of his testimony.

Defendant argues that the prosecutor committed prosecutorial misconduct in this case by making improper comments during voir dire and during closing arguments. We disagree.

Claims of prosecutorial misconduct are reviewed de novo. *People v Ackerman*, 257 Mich App 434, 448; 669 NW2d 818 (2003). A prosecutor's remarks are evaluated in the context of the evidence presented and in light of defense arguments. *People v Rodriguez*, 251 Mich App 10, 30; 650 NW2d 96 (2002). Defendant never objected to the comments at trial, thus he failed to preserve this issue on appeal. Unpreserved claims are reviewed for plain error, which means defendant has the burden to show that (1) an error occurred, (2) the error is plain or obvious, and (3) the error affected a substantial right. *People v Cross*, 281 Mich App 737, 738; 760 NW2d 314 (2008). Reversal is warranted only "if the defendant is actually innocent or the error seriously undermined the fairness, integrity, or public reputation of the trial." *People v Pipes*, 475 Mich 267, 274; 715 NW2d 290 (2006).

The role and responsibility of a prosecutor differs from that of other attorneys: his duty is to seek justice and not merely to convict. *People v Jones*, 468 Mich 345, 354; 662 NW2d 376 (2003); *People v Dobek*, 274 Mich App 58, 63; 732 NW2d 546 (2007); *People v Erb*, 48 Mich App 622, 631; 211 NW2d 51 (1973). The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *Dobek, supra*, 274 Mich App 63.

Prosecutorial misconduct issues are decided on a case-by-case basis, and the reviewing court must examine the record and evaluate a prosecutor's remarks in context. *People v Mann*, 288 Mich App 114, 119; \_\_\_ NW2d \_\_\_ (2010). The propriety of a prosecutor's remarks depends on all the facts of the case. *People v Likine*, 288 Mich App 648, 659; \_\_\_ NW2d \_\_\_ (2010). Prosecutorial comments must be read as a whole and evaluated in light of defense arguments and the relationship they bear to the evidence admitted at trial. *People v Brown*, 279 Mich App 116, 135; 755 NW2d 664 (2008).

During voir dire, the prosecutor made the following comments, which defendant argues constituted prosecutorial misconduct:

PROSECUTOR CHABALOWSKI: Has anyone formed a negative opinion of police officers in general based on their experience from getting a speeding ticket or something like that? Does everyone under—is everyone in agreement that they're doing their job and although I might not like the speeding ticket that I just got if I was in fact speeding, yeah I got caught this time, right? Okay.

Is anyone going to hold that against Trooper Church for doing his job back in September? Okay. That—and that experience is what I'm getting at.

Because what we're talking about is, you know, essentially a traffic stop that wound up escalating and Trooper Church had to do things that, you know, under normal situations and in your—in your cases probably didn't happen. He had to do more. You know, the defendant wound up resisting him some.

Is anyone going to go and hold against Trooper Church what he had to do on that time under those circumstances? Everyone—does everyone agree that sometimes a suspect or a driver's actions might affect what the police have to do? Okay. Everyone would agree that for the most part, police don't just drive around trying to find people to, you know, be mean to or try to beat up or anything right?

THE COURT: This is sounding a little hypothetical Mr. Chabalowski.

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PROSECUTOR CHABALOWSKI: Okay folks. Does anyone—you all come with different backgrounds. Does anyone come thinking that it's bad that we have a law that says you can't resist police officers, you can't oppose them, you can't obstruct them, you can't fight with them? . . . How about this idea of tampering with evidence. Anyone think it's a—it's a good thing for people to start tampering with evidence or it's a bad—it's bad that we have a law that says you can't—you cannot tamper with evidence?

UNIDENTIFIED JUROR: I'm not sure I understand the concept of this case.

PROSECUTOR CHABALOWSKI: Well you heard now—I read the Information to you, okay. And obviously when—with just the Information that I read it's hard to understand exactly what you're going to hear. Okay. But based on what I—what I read, it was, you know, that he was—that he knowingly or intentionally removed, altered—or that he did knowingly and intentionally remove, alter, conceal, destroy, or otherwise tamper with evidence to be offered in an official proceeding. . . .”

The function of voir dire is to elicit sufficient information from prospective jurors to enable the trial court and counsel to determine who should be disqualified from service on the basis of an inability to render decisions impartially. In ensuring that voir dire effectively serves this function, the trial court has considerable discretion in both the scope and conduct of voir dire. What constitutes acceptable and unacceptable voir dire practice “does not lend itself to hard and fast rules.” *People v Sawyer*, 215 Mich App 183, 186; 545 NW2d 6 (1996).

During voir dire, the prosecutor attempted to discern whether the jury could be impartial. His query about whether the jurors could be impartial about police officers and the laws they had to enforce in this case was within the proper scope of voir dire. Questioning that is necessary to determine whether a prospective juror should be excused is permissible. *People v Bell*, 209 Mich App 273, 278; 530 NW2d 167 (1995). Here, defendant was charged with resisting arrest, and when reviewing the entire trial transcript, it seems clear that the prosecutor was conveying to the jury that this was the State's theory of the case and that they were to make the ultimate determination about this matter, and not rely on a statement by the prosecutor.

Defendant also argues that the following statements made by the prosecutor during closing arguments constituted prosecutorial misconduct:

PROSECUTOR CHABALOWSKI: But it did turn out that he had what Trooper Church suspected to be a crack rock and by all reasonable inferences from the evidence in this case I think you—you would conclude that it was a crack rock.

The crack rock was in the defendant's lap and the trooper—and Trooper Church tried to seize that as a piece of evidence that we could have brought into court, an official proceeding here with the judge and the jury and two lawyers and put a sticker on and said this is Exhibit I. This is a piece of evidence that you can look at to determine whether or not the defendant was in possession of cocaine.

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PROSECUTOR CHABALOWSKI: So—we had this discussion about are you sure it's evidence, are you sure it was cocaine. Trooper Church based on his training and experience [sic]. He doesn't have a lab report. Of course we didn't ask him if he's—are you ninety-nine point nine, are you ninety-nine point eight, are you seventy percent sure, we didn't ask him those things. But really, is there any question in any of your mind, your juror's minds right now that it was something other than crack cocaine?

If it had been a tic tac, if it had been an aspirin, if it had been a chunk of soap he'd have just given it to him and said, yeah here you go, I—I don't know how it's—I don't know what it is. It's here, it's a cra—it's a piece of soap. It's whatever it is. Sure it's packaged in a [sic] odd way, but it's nothing. But he doesn't do that, he eats it, he gets rid of it."

We conclude that these statements were not improper. The prosecutor did not refer to facts not in evidence, but rather made reasonable inferences from the evidence presented. Prosecutors may not make a statement of fact to the jury that is unsupported by the evidence, but they are free to argue the evidence and all reasonable inferences. *People Bahoda*, 448 Mich 261, 282, 531 NW2d 659 (1995). Trooper Church was an experienced officer of the law. Based on his expertise in the law enforcement field, he recognized the substance in defendant's lap as crack cocaine. Given defendant's reaction to Trooper Church's request to hand over the substance, it would be reasonable to infer that Trooper Church's identification of the substance as crack cocaine was correct. Furthermore, it is unnecessary to make any determination about

whether the substance was indeed crack cocaine in order to convict defendant of these charges. He was not charged with possession of cocaine. Under MCL 750.483a(5)(a) he need only “[k]nowingly and intentionally remove, alter, conceal, destroy, or otherwise tamper with evidence to be offered in a present or future official proceeding.”

Finally, regarding both the comments made in voir dire and during closing arguments, the trial court instructed the jurors regarding the law and the evidence that could be considered, and told them that the comments of counsel were not law. The jury is presumed to follow the instructions of the court. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). In sum, defendant has not established that there was error requiring reversal stemming from prosecutorial misconduct in this case.

Next, defendant argues that defense counsel was ineffective for failing to object to the alleged prosecutorial misconduct. We disagree.

Defendant argues that defense counsel was ineffective solely for failing to object to the various instances of alleged prosecutorial misconduct. We have concluded that defendant’s allegations of prosecutorial misconduct are meritless. Counsel is not defective for failing to raise meritless or futile objections. *People v Moorer*, 262 Mich App 64, 76; 683 NW2d 736 (2004).

Finally, defendant argues that his conviction was not supported by sufficient evidence. We disagree.

This Court reviews a sufficiency of the evidence claim de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). We examine the evidence in a light most favorable to the prosecution to determine whether a rational juror could conclude that the essential elements of the crime were proven beyond a reasonable doubt. *Id.* We resolve evidentiary conflicts in favor of the prosecution. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Circumstantial evidence and reasonable inferences arising from such evidence can be satisfactory proof of the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

There were only two witnesses who testified in this case, and the jury clearly believed the testimony of Trooper Church. In order to convict a defendant of evidence tampering under MCL 750.483a(5)(a) defendant need only “[k]nowingly and intentionally remove, alter, conceal, destroy, or otherwise tamper with evidence to be offered in a present or future official proceeding.” Church stated that he saw a rock of crack cocaine in defendant’s lap. When he tried to get the rock of crack cocaine out of defendant’s hand, defendant fought him off and put the rock in his mouth and swallowed it. Trooper Church attempted to get defendant to spit it out by spraying him with pepper spray, but was unsuccessful.

To convict defendant of resisting and obstructing a police officer, the prosecutor had to prove that the defendant did assault, batter, wound, resist, obstruct, oppose or endanger a police officer; and that the defendant knew or had reason to know that the officer was performing his duties. MCL 750.81d(1). Trooper Church testified that he and defendant physically struggled over the rock of crack cocaine with defendant refusing to cooperate and give him the substance, and ending when defendant swallowed the substance and Church sprayed him in the face with

pepper spray. Trooper Church testified that he was wearing a full Michigan State Police Trooper uniform, and driving a fully marked police cruiser with lights. The jury found Trooper Church credible and the testimony he rendered was sufficient to support a conviction on both counts. The evidence must be viewed in a light most favorable to the prosecutor. *People v Wolfe*, 440 Mich 508; 489 NW2d 748 (1992). There is no merit to defendant's argument.

Affirmed.

/s/ Donald S. Owens  
/s/ Peter D. O'Connell  
/s/ Patrick M. Meter